

lien priority if the amount of the subordination or waiver plus the unpaid principal balance of existing EM and EE loans and subordinations does not exceed their EM or EE loan approval authority stated in tables which are available from any FmHA or its successor agency under Public Law 103-354 Office. When the lien priority for more than one type of loan is subordinated or waived, the total amount of the approval official's authority will be limited to the loan with the lowest approval authority for that official. However, the State Director may approve subordinations or waivers regardless of the amount. State Directors may redelegate their authority for approving subordinations to qualified State Office employees.

(d) *Forms.* (1) Subordinations or lien waivers authorized in this Subpart will be made on Form FmHA or its successor agency under Public Law 103-354 460-2, "Subordination by the Government," or on other forms approved by the State Director with OGC's advice. If Form FmHA or its successor agency under Public Law 103-354 460-2 does not conform to a State's recording requirements, a State supplement may be used, if approved by OGC, to modify the form.

(2) *Form FmHA or its successor agency under Public Law 103-354 431-2* or other similar plan of operation acceptable to FmHA or its successor agency under Public Law 103-354 will show the subordination or lien waiver and repayment.

(3) Items 1, 22, 23 and 24 will be completed on Form FmHA or its successor agency under Public Law 103-354 410-1.

(e) *Loans under CCC program.* See Exhibits B and C of this Subpart.

(1) When the ASCS County Office makes CCC loans to the borrower, FmHA or its successor agency under Public Law 103-354 will not execute a form of subordination or lien waiver.

(2) When the full value of a CCC loan on cotton is to be advanced to the borrower by a bank, ginner, or warehouseman whom the County Supervisor considers financially responsible, and when a check or draft issued by the bank, ginner, or warehouseman is made payable to FmHA or its successor agency under Public Law 103-354, or jointly to FmHA or its successor agency under

Public Law 103-354 and the borrower, and is delivered to the County Supervisor, the County Supervisor may then execute the lienholder's waiver on Form CCC Cotton A even though item 2 of that form shows that the CCC loan will be distributed to such a bank, ginner, or warehouseman. Loan approval officials may approve waivers of crop liens in accordance with subsection (c) of this section.

(3) If the commodity covered by the CCC loan is released by CCC or redeemed by the borrower, the FmHA or its successor agency under Public Law 103-354 lien will be restored to the priority it held before the CCC loan was made.

(4) When the borrower wishes to rotate or exchange a new crop for an old crop that is stored under the CCC Grain Reserve Program, the County Supervisor and the ASCS official will proceed as set out in Exhibit C of this subpart.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 40786, Nov. 10, 1986; 53 FR 7338, Mar. 8, 1988; 53 FR 8740, Mar. 16, 1988; 57 FR 18680, Apr. 30, 1992]

§§ 1962.31—1962.33 [Reserved]

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

Chattel and EO property may be transferred to eligible or ineligible transferees who agree to assume the outstanding loan, subject to the provisions set out in this section. A transfer and assumption may also be made when one or more of the borrowers or the former spouse and co-obligor of a divorced borrower withdraws from the operation or dies. The transfer of accounts secured by real estate or both real estate and chattels will be processed under Subpart A of Part 1965 of this chapter. The transferor (borrower) must be sent Attachment 1 of exhibit A of subpart S of part 1951 of this chapter as soon as the borrower contacts the County Supervisor inquiring about a transfer. In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if

an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941 of this chapter and is available in any FmHA or its successor agency under Public Law 103-354 office, for the definition of “controlled substance”) prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Transferee applicants will attest on Form FmHA or its successor agency under Public Law 103-354 410-1, “Application for FmHA or its successor agency under Public Law 103-354 Services,” that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for transfer and assumption for this reason is not appealable.

(a) *Transfer to eligibles.* Transfers of chattel security and EO property to a transferee who is eligible for the kind of loan being assumed or who will become eligible after the transfer may be approved, provided:

(1) The transferee assumes the total outstanding balance of the FmHA or its successor agency under Public Law 103-354 debts or that portion of the outstanding balance equal to the present market value of the chattel security or EO property, less any prior liens, if the property is worth less than the entire debt.

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Form FmHA or its successor agency under Public Law 103-354 460-9, “Assumption Agreement (Same Terms-Eligible Transferee),” will be used. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. If the existing loan repayment period is extended, the debt being assumed may be re-

scheduled using Form FmHA or its successor agency under Public Law 103-354 1965-13, “Assumption Agreement (Farmer Programs Loans).” The new repayment period may not exceed that for a new loan of the same type and the current interest rate for such loans will be charged. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be assumed at new rates and terms. Upon request of an applicant assuming a loan at new rates and terms and and/or an applicant eligible to receive limited resource rates and terms, the interest rate charged by FmHA or its successor agency under Public Law 103-354 will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA or its successor agency under Public Law 103-354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office) for the type assistance involved.

(3) The transfer of EM actual loss loans, or EM loans made before September 12, 1975, will be made as provided under paragraph (b) of this section. However, when one or more of the borrowers or jointly obligated partners or joint operators withdraw from the operation and those remaining desire to assume the total indebtedness and continue the operation, a transfer to the remaining borrowers, partners, or joint operators may be made as an eligible transferee.

(4) The requirements found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

(b) *Transfer to ineligibles.* Transfer of the chattel security and EO property to a transferee who is not eligible for the kind of loan being assumed may be approved, provided:

(1) It is in the Agency’s financial interest to approve the transfer of security or EO property and assumption of the debts rather than to liquidate the security or EO property immediately.

(2) The transferee assumes the total outstanding balance of the Agency debt, or an amount equal to the

present market value of the security or EO property as determined by the County Supervisor, less any prior liens, if the value is less than the entire debts.

(3) Agency debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 1965-13. The Farm Credit Programs NP interest rate for chattel property set forth in exhibit B of Agency Instruction 440.1 (available in any Agency office), in effect at the time of loan approval, will be charged. Any deferred interest not paid by the time the transfer takes place must be added to the principal balance. The transferred property, including EO property, will be subject to any existing Agency lien. In the absence of an existing Agency lien, new lien instruments will be executed.

(4) The transferee can repay the Agency in accordance with the assumption agreement and can legally enter into the contract.

(5) The requirements found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

(c) *Effect of signature.* In all cases the purpose and effect of signing an assumption agreement or other evidence of indebtedness is to engage separate and individual personal liability, regardless of any State law to the contrary.

(d) *Release of transferor from liability.* The borrower and any cosigner may be released from personal liability to Agency when all the chattel security or EO property is transferred to an eligible or ineligible applicant and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. The appropriate official is authorized to approve releases from liability in accordance with § 1962.34(h) of this subpart. When there will be no release from liability, the transferor and co-signer of a Farm Credit Programs loan must be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any Agency office).

(e) *Agency actions.* (1) *Transfer to eligible applicant.* The Agency will determine the transferee's eligibility for the type of loan to be assumed.

(2) *Release from liability.* If the total outstanding debt is not assumed, the Agency must make the following determinations before it releases the transferor from personal liability:

(i) The transferor and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer,

(ii) The transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability, and

(iii) The transferee will assume a portion of the indebtedness at least equal to the present market value of the security.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 4139, Feb. 3, 1986; 51 FR 6734, Feb. 26, 1986; 51 FR 13482, Apr. 21, 1986; 51 FR 40786, Nov. 10, 1986; 51 FR 45439, Dec. 18, 1986; 53 FR 7338, Mar. 8, 1988; 53 FR 10358, Mar. 31, 1988; 53 FR 17688, May 18, 1988; 53 FR 35785, Sept. 14, 1988; 56 FR 3396, Jan. 30, 1991; 56 FR 12646, Mar. 27, 1991; 56 FR 15825, Apr. 18, 1991; 58 FR 52654, Oct. 12, 1993; 60 FR 28321, May 31, 1995; 61 FR 35931, July 9, 1996]

§§ 1962.35—1962.39 [Reserved]

§ 1962.40 Liquidation.

(a) *Voluntary liquidation*—(1) *General.* When a borrower contacts FmHA or its successor agency under Public Law 103-354 and asks about voluntarily liquidating security, the borrower will be sent attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter or attachments 1, 3 and 4, and the preliminary application forms by certified mail, or the forms will be hand delivered at the County Office. The servicing notices which provide possible alternatives to liquidation provide a maximum of 60 days for the borrower to apply for servicing. Therefore, FmHA or its successor agency under Public Law 103-354 will not discuss liquidation or methods of liquidation until 60 days after the borrower receives the notices except in serious situations which are documented in detail in the case file. During the 60-day time period the County Supervisor may answer questions regarding the servicing notices. After 60 days, the borrower